

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D.C.**

**VERITAS HEALTH SERVICES, INC.  
d/b/a CHINO VALLEY MEDICAL  
CENTER,**

**Respondent,**

**v.**

**UNITED NURSES ASSOCIATIONS OF  
CALIFORNIA/UNION OF HEALTH  
CARE PROFESSIONALS, NUHHCE,  
AFSCME, AFL-CIO,**

**Charging Party.**

**Case No. 31-CA-30105**

**VERITAS HEALTH SERVICES, INC. dba CHINO VALLEY MEDICAL CENTER'S  
RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE**

Respondent Veritas Health Services, Inc., dba Chino Valley Medical Center ("Respondent"), pursuant to Section 102.24 of the Rules and Regulations of the National Labor Relations Board ("Board"), submits this response to the Board's Order Transferring Proceeding to the Board and Notice to Show Cause why the Acting General Counsel's Motion for Summary Judgment should not be granted, and states as follows:

**I.  
INTRODUCTION**

In April 2008, Petitioner United Nurses Associations of California/Union of Health Care Professions, NUHHCE, AFSCME, AFL-CIO ("Union") filed a representation petition in Case No. 31-RC-8689, hereinafter called "2008 Petition," seeking to represent certain RNs employed by Respondent. During proceedings on the 2008 Petition the Union entered into a detailed

stipulation setting out and agreeing to the supervisory duties regularly performed by Respondent's Charge Nurses and further stipulating that the Charge Nurses are Section 2(11) supervisors. Thereafter an election was held pursuant to the 2008 Petition and the Union lost by a vote of 48 "Yes" to 65 "No."

Beginning in January 2010 the Union took another run at Respondent's RNs. This time the Union specifically targeted and recruited Respondent's Charge Nurses to assist in its organizing efforts. In response to the Union's efforts more than half of the Charge Nurses became involved in the Union's organizing efforts, with several of them being identified by both the Union and employees as leaders of the effort. Some of the organizing activities by Charge Nurses included meeting with the Union's lead organizer and eligible voters at private homes and restaurants, signing a petition announcing their support for the Union, encouraging employees to seek out the Union and attend Union meetings, accompanying employees to card-signing meetings and actually signing union cards themselves at those meetings. Having secured the support of employees through the efforts of the Charge Nurses, on February 22, 2010 the Union filed another representation petition, docketed as 31-RC-8795 and hereinafter called the "2010 Petition." During proceedings on the 2010 Petition the Union again stipulated that the Charge Nurses, including the Charge Nurses who were most instrumental in organizing Respondent's Nurses, regularly perform supervisory duties and are Section 2(11) supervisors. However, by this time the Union's misconduct vis-à-vis the Charge Nurses and its organizing efforts had already had its desired impact and, predictably, the Union won the election ("2010 election").

Despite the evidence supporting these facts presented during the hearing on Respondent's objections to the 2010 election, the Administrative Law Judge who presided over the hearing, by

her Report and Recommendations on Objections dated July 7, 2010 (“ALJ Report”), overruled Respondent’s objections to the election. Exhibit 8 to the Motion (G.C. Ex. 8). Respondent then filed formal exceptions to the ALJ’s Report and a supporting brief (G.C. Exs. 9(a) and 9(b)). On January 25, 2011 the Board issued its Decision and Certification of Representative (“Certification”) in which it rejected all of Respondent’s exceptions and certified the Union as the representative of the stipulated appropriate unit. G.C. Ex. 10. It is Respondent’s position that the Certification is invalid because the results of the 2010 election should have been set aside by the Board as a result of the supervisors’ unlawful participation in the Union’s organizing campaign, because the Union engaged in other misconduct that tainted the election results and because Respondent was denied due process during the course of proceedings on its objections to the 2010 election.

The Union filed its charge in this matter on February 14, 2011. G.C. Ex. 14(a). The General Counsel then filed a Complaint (G.C. Ex. 14(a)), which Respondent answered on March 1, 2011 (G.C. Ex. 15(a)). On March 3, 2011, the General Counsel filed the instant Motion to Transfer Case To And Continue Proceedings Before the Board And for Summary Judgment. On March 8, 2011, the Board issued its Order Transferring Proceeding to the Board and Notice to Show Cause.

It is Respondent’s position that the Certification was improper, in manifest disregard of the evidence and the law, in contravention of Board policy and procedure, and in violation of Respondent’s due process rights as referenced above. In this regard, Respondent relies on the complete record that was developed during the proceedings in Case No. 31-RC-8795 as defined by Sections 102.68 and 102.69 of the Board’s Rules and Regulations, including without limitation all transcripts of the hearing conducted in front of the ALJ, including all evidence and

documents offered by Respondent during the hearing whether admitted into evidence or rejected by the ALJ. Respondent also contends that the allegations of the Complaint are barred by Section 10(b) of the Act. Therefore, Respondent respectfully requests that the Board deny the General Counsel's Motion for Summary Judgment and dismiss the Complaint in its entirety.

## **II.**

### **ARGUMENT & AUTHORITIES**

#### **A. Summary Judgment Should Be Denied Because Section 2(11) Supervisors Unlawfully Participated In The Union's Organizing Campaign And Influenced Eligible Voters**

As shown by Respondent during the course of proceedings pursuant to the 2010 Petition, the Union specifically targeted and recruited Respondent's Charge Nurses to lead its organizing efforts that resulted in the 2010 Petition and election. The Board has long recognized that a manager or supervisor's participation in union organizing activities taints the election process. *Harborside Healthcare, Inc.*, 343 NLRB 906, 907 (2004); *see also, Evergreen Healthcare, Inc. v. NLRB*, 104 F.3d 867, 873 (6th Cir. 1997); *Delchamps, Inc.*, 210 NLRB 179 (1974); *WKRG-TV, Inc.*, 190 NLRB 174, *enfd* 470 F.2d 1302 (5th Cir. 1973). Furthermore, supervisory involvement in soliciting union authorization cards warrants dismissing the representation petition outright. *See, e.g., Dejana Indus., Inc.*, 336 NLRB No. 127 (2001) [establishing bright line rule that cards solicited by a supervisor should be disregarded]; *Southeastern Newspapers*, 129 NLRB 311 (1961); *Wolfe Metal Products Corp.*, 119 NLRB 659 (1958).

As conclusively evidenced by the 2008 Charge Nurse Stipulation, the Union has been well aware since at least 2008 that Respondent's Charge Nurses are Section 2(11) supervisors. Accordingly, the Union was also well aware that it could not lawfully utilize Charge Nurses to organize Respondent's RNs. However, instead of avoiding all contact with Charge Nurses, evidence in the record shows that the Union specifically targeted the Charge Nurses to organize

Respondent's RNs on behalf of the Union. See, i.e., T 82-24, 143, 154, 196-197, 201-204, 223, 267.<sup>1</sup>

Furthermore, the recruited Charge Nurses did in fact organize on behalf of the Union. For example, at least two Charge Nurses attended the Union's initial organizing meetings held at the homes of employees. At least eight Charge Nurses attended one or more meetings with Union representatives and eligible employees held at a restaurant. See, i.e., T 205-206, 347, 473. Other assistance provided by Charge Nurses included reviewing lists of eligible voters and assisting the Union in identifying Union supporters as well as directly promoting the Union during discussions with eligible voters. Charge Nurses also recruited eligible voters to sign Union Authorization Cards, attended Union meetings at which eligible voters signed cards, and signed cards themselves in the presence of eligible voters. G.C. Ex. 9(b), Part III(B)(3); T 77, 153-155, 31, 329, 348-349.

Notwithstanding the foregoing issues, the ALJ Report recommended Respondent's objections to the election be overruled, and the Board subsequently overruled Respondent's exceptions to the Report and issued the Certification in favor of the Union. The ALJ Report and the Board Decision are erroneous based on, among other things, the following exceptions, which were raised and briefed in Respondent's Exceptions to the Administrative Law Judge's Recommended Decision on Objections and Challenges and Respondent's Brief in Support thereof (G.C. Exs. 9(a) and 9(b)):

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<sup>1</sup> The Reporter's Transcript of the hearing on objections conducted during proceedings involving the 2010 Petition will be referred to herein as "T" followed by the appropriate page number reference(s).

1. Exception to the finding that the supervisory status of certain Charge and/or Relief Charge Nurses (“Charge Nurses”) “was in issue” during the 2008 certification election (G.C. Ex. 8, 2:34-35). See, i.e., G.C. Ex. 9(a) ¶ 1; G.C. Ex. 9(b), Parts II(A), III(A) and (B).

2. Exception to the finding that Charge Nurses did not encourage employees to support United Nurses Associations of California/Union of Health Care Professionals, NUHHCE, AFSCME, AFL-CIO (“the Union”) after March 5, 2010 (G.C. Ex. 8, 3:31-33). See, i.e., G.C. Ex. 9(a) ¶ 2; G.C. Ex. 9(b), Parts III(B), IV(C).

3. Exception to the failure to consider and credit undisputed evidence that the Union targeted Charge Nurses to lead and assist with its organizing campaign and to elicit support from employees reporting to the Charge Nurses (G.C. Ex. 8, 5:9-20). See, i.e., G.C. Ex. 9(a) ¶ 3; G.C. Ex. 9(b), Parts III(B), IV(C).

4. Exception to the failure to find that the Union targeted Charge Nurses to lead and assist with the Union’s organizing campaign even though it knew that Charge Nurses were Section 2(11) supervisors. See, i.e., G.C. Ex. 9(a) ¶ 4; G.C. Ex. 9(b), Parts II(A) and (B), III(A) and (B), IV(C).

5. Exception to the failure to find that the Union targeted Charge Nurses to lead and assist with the Union’s organizing campaign because it knew that Charge Nurses were Section 2(11) supervisors. See, i.e., G.C. Ex. 9(a) ¶ 5; G.C. Ex. 9(b), Parts II(A) and (B), III(A) and (B), IV(C).

6. Exception to the finding that the Union removed the Charge Nurses from its organizational committee roster after March 5, 2010 (G.C. Ex. 8, 5:27-31). See, i.e., G.C. Ex. 9(a) ¶ 6; G.C. Ex. 9(b), Part III(B), IV(C).

7. Exception to the finding that Charge Nurses did not support or otherwise promote the Union after the March 5 Stipulation (G.C. Ex. 8, 5:27-31). See, i.e., G.C. Ex. 9(a) ¶ 7; G.C. Ex. 9(b), Parts III(B), IV(C).

8. Exception to the ALJ refusing to allow Respondent to inquire into communications between Charge Nurses and the Union's representatives (G.C. Ex. 8, 5:44-51). See, i.e., G.C. Ex. 9(a) ¶ 8; G.C. Ex. 9(b), Part IV(B).

9. Exception to the finding that Charge Nurse Dolly Casas did not talk to employees about the Union (G.C. Ex. 8, 6:7). See, i.e., G.C. Ex. 9(a) ¶ 9; G.C. Ex. 9(b), Parts III(B) and IV(C).

10. Exception to the finding that Charge Nurse Lucia Eiley did not tell employees to meet with the Union for the purpose of hearing the Union's position on the organizing campaign (G.C. Ex. 8, 6:30-34). See, i.e., G.C. Ex. 9(a) ¶ 10; G.C. Ex. 9(b), Parts III(B) and IV(C).

11. Exception to the failure to find that Charge Nurse Lucia Eiley encouraged employees to support the Union and sign authorization cards and did not tell employees to meet with the Union for the purpose of hearing the Union's position on the organizing campaign. See, i.e., G.C. Ex. 9(a) ¶ 11; G.C. Ex. 9(b), Parts III(B) and IV(C).

12. Exception to the failing to consider evidence that Charge Nurse Sharon Lamoine spoke favorably to employees about the Union (G.C. Ex. 8, 8:48-51). See, i.e., G.C. Ex. 9(a) ¶ 12; G.C. Ex. 9(b), Parts III(B) and IV(C).

13. Exception to the ALJ concluding that "a distinction must be made between prounion supervisory speech that neither called for nor required unit employees to take any prounion action (unassertive prounion conduct) and supervisory speech that could reasonably be

expected to compel employee prounion activity” (G.C. Ex. 8, 10:24-27). See, i.e., G.C. Ex. 9(a) ¶ 13; G.C. Ex. 9(b), Part IV(C).

14. Exception to the ALJ concluding that Charge Nurses engaged in “passive prounion” or “unassertive prounion” conduct, and further concluding that the “unassertive prounion conduct” did not reasonably tend to coerce or interfere with employees’ exercise of free choice in the election (G.C. Ex. 8, 11:14-24). See, i.e., G.C. Ex. 9(a) ¶ 14; G.C. Ex. 9(b), Parts III(B) and IV(C).

15. Exception to the ALJ concluding that the Charge Nurses’ overall conduct did not materially affect the outcome of the election (G.C. Ex. 8, 11:26-27). See, i.e., G.C. Ex. 9(a) ¶ 15; G.C. Ex. 9(b), Parts III(B) and IV(C).

16. Exception to the finding that after March 5, 2010, the Charge Nurses did not engage in any prounion conduct (G.C. Ex. 8, 11:31-33). See, i.e., G.C. Ex. 9(a) ¶ 16; G.C. Ex. 9(b), Part IV(C).

17. Exception to the failure to consider the activities of Charge Nurses in support of the Union prior to the filing of the petition, including encouraging employees to attend Union meetings and to sign Union authorization cards, in deciding whether the results of the election should be set aside. See, i.e., G.C. Ex. 9(a) ¶ 17; G.C. Ex. 9(b), Parts III(B) and IV(C).

18. Exception to the failure to find that the activities of Charge Nurses in support of the Union prior to the filing of the petition, in conjunction with the activities of the Charge Nurses in support of the Union after the petition was filed, interfered with the election and requires that the results of the election be set aside. See, i.e., G.C. Ex. 9(a) ¶ 18; G.C. Ex. 9(b), Parts III(B) and IV(C).



19. Exception to the failure to find that the Union's conduct in targeting and enlisting Section 2(11) supervisors in support of its organizing campaign, including utilizing Section 2(11) supervisors to urge eligible voters to attend card signing meetings and having Charge Nurses sign Union authorization cards in front of eligible voters, interfered with voter free choice and requires that the results of the election be set aside. See, i.e., G.C. Ex. 9(a) ¶ 19; G.C. Ex. 9(b), Parts III(B) and IV(C).

20. Exception to the ALJ concluding that Charge Nurses Angelica Silva's and Cheryl Gilliatt's alleged retractions "significantly lessened if not eradicated any supervisory pressure employees might reasonably have earlier felt" (G.C. Ex. 8, 11:37-12:3). See, i.e., G.C. Ex. 9(a) ¶ 20; G.C. Ex. 9(b), Parts III(B) and IV(C).

21. Exception to the ALJ failing to consider the totality of the Charge Nurses' prounion activities and statements in support of the Union (G.C. Ex. 8, 12:5-28). See, i.e., G.C. Ex. 9(a) ¶ 21; G.C. Ex. 9(b), Parts III(B) and IV(C).

22. Exception to the finding that Charge Nurse Cheryl Gilliatt did not observe employees sign cards and that she did not know which employees had signed authorization cards (G.C. Ex. 8, 12:7-10). See, i.e., G.C. Ex. 9(a) ¶ 22; G.C. Ex. 9(b), Parts III(B) and IV(C).

23. Exception to the finding that Charge Nurse Cheryl Gilliatt's prounion conduct was "not significantly widespread" (G.C. Ex. 8, 12:23-24). See, i.e., G.C. Ex. 9(a) ¶ 23; G.C. Ex. 9(b), Parts III(B) and IV(C).

24. Exception to the ALJ failing to find that undisputed evidence of Charge Nurses soliciting authorization cards inherently interfered with voter free choice and was sufficient, by itself, to warrant setting aside the election (G.C. Ex. 8, 8:40-12:31). See, i.e., G.C. Ex. 9(a) ¶ 24; G.C. Ex. 9(b), Parts III(B) and IV(C).

25. Exception to the ALJ failing to conclude that undisputed evidence of Charge Nurses soliciting authorization cards and otherwise engaging in prounion campaign activities was sufficient to warrant setting aside the election (G.C. Ex. 8, 8:40-12:31). See, i.e., G.C. Ex. 9(a) ¶ 25; G.C. Ex. 9(b), Parts III(B) and IV(C).

26. Exception to the entirety of the Report's recommendations (G.C. Ex. 8, 14:19-21). See, i.e., G.C. Ex. 9(a) ¶ 31.

The General Counsel's Motion should be denied because Section 2(11) supervisors unlawfully participated in the Union's organizing activities. Their participation is a per se violation of the Act and is sufficient ground to set aside the election.

**B. Summary Judgment Should Be Denied Because The ALJ Should Have Allowed Respondent To Obtain And Present Relevant Information Relating To Its Election Objections**

In order to obtain evidence in support of its objections, Respondent served subpoenas *duces tecum* on the Union and Charge Nurses requesting information about communications between Charge Nurses and the Union's representatives and organizers. The information requested by the subpoenas would have enabled Respondent to further develop evidence establishing that the Union specifically targeted and relied on the efforts of Section 2(11) supervisors in organizing Respondent's RNs and that Charge Nurses directly solicited and encouraged eligible voters to sign authorizations cards and support the Union in the election.

However, in ruling on the Union's petitions to revoke those subpoenas the ALJ refused to require production of such evidence. See, i.e., T 2-47. The ALJ also refused to receive such evidence that Respondent had been able to obtain independent of those portions of its subpoenas that the ALJ allowed.

The ALJ erred. Respondent should have been permitted to develop and present the requested evidence, and to then call additional witnesses and/or present other evidence disclosed

by such evidence, in support of its objections. Because Respondent was not permitted to present and develop such evidence, the record before the ALJ, and now the Board, is incomplete and Respondent has been denied due process. Simply put, Respondent was denied access to documents evidencing the extent of prounion activity by Section 2(11) supervisors, as set forth in the following exceptions to the ALJ's Report:

1. Exception to the ALJ prohibiting Respondent from discovering information or eliciting testimony relevant to communications between Charge Nurses and the Union's representatives (G.C. Ex. 8; 5:44-50). See, i.e., G.C. Ex. 9(a) ¶ 28; G.C. Ex. 9(b), Part IV(B).

2. Exception to the ALJ prohibiting Respondent from discovering information or eliciting testimony relevant to prounion communications between Charge Nurses and eligible voters (G.C. Ex. 8, 5:44-50). See, i.e., G.C. Ex. 9(a) ¶ 29; G.C. Ex. 9(b), Part IV(B).

3. Exception to the ALJ prohibiting the Employer from discovering information or eliciting testimony relevant to communications between the Union and eligible voters relating to the Union's "I'M VOTING YES" campaign poster (G.C. Ex. 8, 5:44-50). See, i.e., Ex. 9(a) ¶ 30; Ex. 9(b), Part IV(B).

**C. Summary Judgment Should Be Denied Because The Union Misused Employees' Photographs For Organizational Purposes**

The Union also manipulated employees' photographs and then used those photographs in a campaign poster without the employees' permission. Just prior to the vote the Union distributed a campaign poster containing numerous pictures of eligible voters holding signs stating, "I'M VOTING YES!" It is undisputed that at the time the photographs were taken the signs held by the employees were blank, and that the Union subsequently "photoshopped" the "I'M VOTING YES" message onto the signs. The following exceptions relating to the Union's use of photoshopped photographs were raised and briefed below, and should have resulted in a

Board order setting aside the results of the 2010 election, and therefore should result in an order denying the instant motion for summary judgment:

1. Exception to the ALJ failing to find that the Union's manipulation of photos of employees in putting together a prounion campaign poster requires the election results to be set aside (G.C. Ex. 8, 12:35-14:6). See, i.e., Ex. 9(a) ¶ 26; Ex. 9(b), Parts III(C) and IV(D).

2. Exception to the ALJ failing to adopt a bright line rule requiring that parties to Board elections obtain written consent from employees before their pictures are used in campaign materials (G.C. Ex. 8, 12:35-14:6). See, i.e., Ex. 9(a) ¶ 27; Ex. 9(b), Part IV(D).

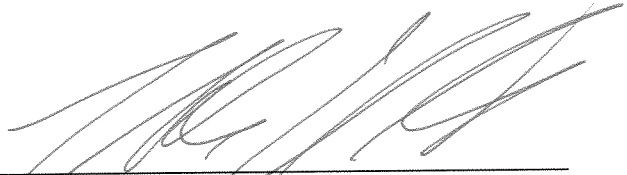
**D. The Allegations Of The Complaint Are Barred By Section 10(b) Of The Act**

Section 10(b) of the Act provides that no unfair labor practice complaint shall be based on any unfair labor practice occurring more than six months prior to the filing of a charge with the Board. Assuming *arguendo* that the Certification is valid, Respondent's April 14, 2010 refusal to recognize or bargain with the Union was an unfair labor practice. See Scott Decl., exh. 1-2. However, the charge in this matter was not filed until February 3, 2011, almost ten months after Respondent's refusal to bargain. Accordingly, the General Counsel's Motion cannot be granted and the Complaint should be summarily dismissed.

**III.**  
**CONCLUSION**

Based on the foregoing, Respondent respectfully submits that the General Counsel's Motion should be denied and the complaint dismissed.

Dated: March 22, 2011



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THEODORE R. SCOTT  
LITTLER MENDELSON  
A Professional Corporation  
501 W. Broadway, Suite 900  
San Diego, CA 92101.3577  
Telephone: 619.515.1837  
Facsimile: 619.615.2261

Attorneys for Respondent  
VERITAS HEALTH SERVICES, INC. d/b/a  
CHINO VALLEY MEDICAL CENTER

**PROOF OF SERVICE BY E-MAIL**

I am employed in San Diego County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 501 W. Broadway, Suite 900, San Diego, California 92101.3577. On March 22, 2011, I served a true and correct copy of the within documents:

1. VERITAS HEALTH SERVICES, INC. dba CHINO VALLEY MEDICAL CENTER'S RESPONSE TO THE BOARD'S NOTICE TO SHOW CAUSE
2. DECLARATION OF THEODORE R. SCOTT IN SUPPORT OF RESPONSE TO NOTICE TO SHOW CAUSE

by e-mailing the document to the following persons at the e-mail addresses listed below:

Lisa Demidovich, Esq.  
United Nurses Associations of California/  
Union of Health Care Professionals  
955 Overland Court, Suite 150  
San Dimas, CA 91773-1718

E-Mail Address  
lisa@unac-ca.org

Joanna Silverman, Esq.  
Field Attorney  
National Labor Relations Board, Region 31  
11150 W. Olympic Boulevard, Suite 700  
Los Angeles, CA 90064-1824

E-Mail Address  
joanna.silverman@nrlrb.gov

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 22, 2011, at San Diego, California.



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ROSA DYER